I am consequently of opinion that, if you take the view of the facts which the testimony appears to warrant, your verdict, so far as the law of the case is concerned, should be that the defendant is guilty on the first count, and not guilty upon the second count of the indictment.

Verdict accordingly.

In the Supreme Court of Louisiana, June, 1859.

J. Q. PROFILET *vs.* HALL & HILDRETH, PROPRIETORS OF ST. CHARLES HOTEL.

1. A notice, whether general or personal, by a hotel keeper, that all valuable articles must be deposited in the safe of the hotel, and if not so deposited, that he would not be responsible for them if lost, does not apply to articles of personal comfort or convenience, as a watch or clothing.
2. But the hotel keeper will not be liable for the theft of such articles, if the lodger has acted with negligence, or has not availed himself of ordinary precautions for their protection. Thus, where a lodger coming to his room late at night in a state of partial intoxication, omitted to require a key to his room, allowed the door to remain unfastened, and left his watch and similar articles negligently lying on a bureau, it was held that the hotel keeper was not responsible for their loss.
3. *Semble*, that the existence of a state of intoxication on the part of a lodger at an inn, raises a presumption of a want of proper care over his property on his part.

Appeal from the Sixth District Court of New Orleans, Howell, J.

A. N. Ogden and *Stansbury*, for plaintiff.
Clarke and *Bayne*, for defendants.

The opinion of the court was delivered by

COLE, J.—The plaintiff, a resident of the State of Mississippi, alleges that he came to the city of New Orleans during the month of July, 1857, and stopped at the St. Charles Hotel, a public house of entertainment kept by Hall & Hildreth. That petitioner was given in this hotel, room No. 124, and retired to rest therein. That during the night of July 10th, 1857, the room occupied by him was

entered, and the following articles, his property, were taken therefrom and wholly lost to him: one gold watch of the value of $225, one seal ring worth $30, one masonic medal of the value of $20, and $100 in bills of Louisiana banks.

The answer of defendants pleads the general denial; then specially admits they are the proprietors of the St. Charles Hotel; that as such they aver that they have provided a safe for the deposit of valuable articles, and have given notice to all the inmates and the visitors of their hotel to place any valuable articles in this safe, and if not so deposited they would not be responsible for them if lost; that plaintiff had had due notice of this fact before he took lodgings at the hotel, and was so bound thereby.

The District judge was of opinion that the possession of the money and the loss thereof was not established, and rendered judgment for $225, the value proved on the trial, of the watch, ring and medals. Defendants have appealed.

Laws have been made in different countries and periods regulating the obligations of keepers of hotels and inns. The Spanish law made the keepers of inns and hotels responsible for "everything which travellers, either by sea or land, put into inns or taverns, or ships that navigate the sea or rivers *to the knowledge of the owners* thereof, or *of those that act* in their places," which was lost through their neglect, fraud or other fault, or if stolen "by any persons who come with the travellers." This law, however, limited the liability of inn or hotel keepers in certain cases. The first is, where they tell the traveller, before they receive him, to take care of his own effects, as that they would not be responsible for them if they should be lost. The second is, where they show him, before they receive him, a trunk or chamber, saying "if you choose to stay here put your things in that trunk or chamber and take the key into your own keeping." The third is, where the things are lost by some fortuitous event, as by fire, &c. Partida 5th, title 8th, law 26th, vol. 2, page 744. The Spanish laws seem to have held them liable when it was to their knowledge, or to that of their agent, that the traveller had put property in their inns or hotels.

The civil law declares that there is formed between the innkeeper and traveller an agreement, in most cases tacit, by which the innkeeper obliges himself to the traveller to lodge him and take care of his baggage, and other equipage; and the traveller on his part, binds himself to pay his charges.

This law forces innkeepers to take the same care as if they were expressly paid for watching the goods, and declares that this obligation is an accessory to the commerce in which they are engaged, and that it is the interest of the public, considering the necessity under which travellers are to trust inn-keepers, that they be bound to an exact and faithful care of the things committed to their custody, and that they be made answerable even for thefts; for otherwise they might with impunity commit thefts themselves. Domat's Civil Law, Cushing's edition, vol. 1, Nos. 1172 and 1178.

The common law obliges the innkeeper to keep safely all such things as his guests deposit within his inn, and Sir William Jones, in his work on the Law of Bailments, quotes *Calye's case*, 8 Rep. 33, § 4, where it was held that the obligation exists "although the guest doth not deliver his goods to the innkeeper to keep." He further says that the law of this case was recognized in *Bennett* vs. *Mellor*, 5 Term Rep. 273, where it was determined "that if an innkeeper refuse to take charge of goods till a future day because his house is full of parcels, still he is liable to make good the loss if the owner stop as a *guest* and the goods be stolen during his stay." Sir Wm. Jones further declares that if the innkeeper fail to provide honest *servants* and honest *inmates*, his negligence is highly culpable, and he ought to answer *civilly* for their acts, even if they should *rob* the guests who are asleep in their chambers. He gives as a reason, that travellers are obliged to rely almost implicitly on the good faith of inn-holders who might have frequent opportunities of associating with ruffians or pilferers, while the injured guest could seldom or never obtain legal proof of such combinations, or even of their negligence, if no actual fraud had been committed by them. He further says, that in all such cases, however, it is competent for the inn-holder to repel the *presumption* of his knavery or default, by *proving* that he took *ordinary* care, or that the *force* which

occasioned the loss or damage was truly irresistible. Jones on Bailments, pp. 95, 96.

Story, in his work on Bailments, holds that a delivery of the goods into the custody of the innkeeper is not necessary, to charge him with them; for although the guest doth not deliver them or acquaint the innkeeper with them, still the latter is bound to pay for them if they are stolen or taken away; even though the person who stole them or carried them away is unknown. If the goods are in his house, they are under his implied care, whether he knew it or not. But if the inn-keeper requires of his guest that he should put his goods in a particular chamber, under lock and key, and that then he will warrant their safety and otherwise not; and the guest, notwithstanding, leaves them in an outer court, where they are taken away, the innkeeper will be discharged. Story also says, that by the common law, as laid down in *Calye's* case, (8th Rep. 32,) the innkeeper is bound to keep the goods of his guest safe, without any stealing or purloining, but he adds, that this doctrine is to be understood with this qualification, that the loss will be deemed *prima facie* evidence of negligence, and the innkeeper cannot exonerate himself but by positive proof that the loss was not by means of any person for whom he is responsible. It is also held, that the innkeeper may be exonerated in various other ways; as for example, that the guest has taken upon himself exclusively the custody of his own goods or has by his own neglect exposed them to peril. Story on Bailments, §§ 482, 483. The same holds that if the goods be stolen from the chamber of a guest, the inn-keeper is liable, although he received no notice that they were placed there. Story on Bailments, § 456; 8 Co. 32; Heyw. N. C. R. 41; 14 John. R. 175; 1 Bell's Com. 469; 1 Bl. Com. 430; 2 Kent's Com. 458 to 463. The Civil Code of Louisiana provides that the innkeeper shall be responsible for the effects brought by travellers although they were not delivered into his personal care, provided however, they were delivered to a servant or person in his employment. C. C., art. 2937.

The doctrine of the Code seems to be that the goods must be delivered to the innkeeper or his agent in order to hold the former

responsible. The duties and responsibilities of innkeepers are treated of under the head of "necessary deposit." C. C. 2935 to 2940; *Dunn & Yates* vs. *Branner*, 13 An. 454. It has also been held by us in *Pope* vs. *Hall & Hildreth*, 14 An., that a guest is not bound to deposit with the proprietor of a hotel or his agent his watch, which he may need to know the hour for a particular purpose, or a small sum of money which may be necessary to be used at any moment for his personal necessities. We see no reason to differ from this doctrine, and do not think it necessarily conflicts with the articles of our code on the subject of innkeepers, for they may be interpreted as referring to those goods which are not essential to the personal convenience of the traveller. Certainly, it could not be reasonably averred that these articles required the traveller to deposit at the office of the hotel his trunk containing his wearing apparel, which he might need at almost any moment. When, then, a trunk, a watch, or other articles of indispensable personal necessity are stolen, the hotel becomes liable, not under articles 2935 to 2940, but under the tacit acknowledged contract between the keeper of the hotel and his guest, that he will exercise due diligence to protect his guest and his property while in his house, unless, indeed, he should be relieved of this liability by the negligence of his guest or some other lawful cause.

It is not necessary, in this case, to decide whether an innkeeper can in any instance, absolve himself from liability, by showing notice by placards posted up in his house. It is sufficient for the present to say, that even if a guest had been personally notified to deposit at the office of the hotel or inn, his watch and his personal effects of an indispensable necessity for the comfort of the traveller, this would not liberate the innkeeper from responsibility, if they were not so deposited. The only question that remains for our consideration, is, whether the plaintiff was guilty of negligence to such a degree as to free the defendants from liability. For as he constitutes himself in part the custodian of such personal effects as he is not bound to deposit, he is obliged to exercise a certain personal supervision over them. The hotel keeper cannot be held liable if he has done all in his power to protect these effects, and if he has

placed it within the ability of the guest to prevent them from being stolen, and the guest has neglected to avail himself of such means. It cannot be expected, at the present day, when hotels are constructed of immense capacity, and capable of holding hundreds of persons, that the proprietor should be obliged to have a guard at every door.

If the keeper of the hotel provides with a lock the room where his guest lodges, which opens inside, and does not open from outside, it is in the power of the guest to protect himself, and the hotel keeper would not be responsible unless it were shown he was guilty of gross negligence in other respects. For Article 2939 of the Civil Code declares that "the innkeeper is not responsible for what is stolen by force and arms, or with exterior breaking open of doors, or by any other extraordinary violence." The evidence as to the key of room No. 124 is contradictory.

Mr. Soria, a witness for plaintiff testifies that about 9 o'clock at night, or later, on the 10th of July, 1857, he went with plaintiff to the office and asked for the key of the room in which the latter had been previously, and was then lodging; that the reply from *Mr. Hitchcock*, or the person then officiating, was that there was no key to that room. Witness is not positive as to the name of the person who gave the reply, but thinks it was *Hitchcock*.

Mr. Hitchcock testifies, that he was at the town of Nahant, Massachusetts, from June to November, 1857. *D. L. Mudge* testifies, that he was a clerk in the St. Charles Hotel, in July, 1857; that he and Mr. Hildreth had charge of the office where the key, of the rooms were kept when not in the door; that plaintiff arrived at the hotel on the 9th of July, at tea-time, and received the keys of his room, 124; that during the night of the 9th, he had a friend lodging with him, and had an extra breakfast on the morning of the 10th, and no complaint was made at the office of want of a key to plaintiff's room. That if a call had been made for a key, one would have been furnished in a few moments by the carpenter, upon an order from the office. He further testifies, that on the evening of the 10th, plaintiff came in with three or four other gentlemen about 11 o'clock at night. All of the party seemed to be intoxi-

cated, and one of them asked if the key was in the box. Witness looked, and seeing that it was not, said he supposed plaintiff had left it at the room or had it with him.

The party went up stairs, and witness says that he heard nothing more of them, except that a boy was sent down for liquor, and witness had to get bar-checks for the boy, and no mention was then made of the want of the key, and witness heard nothing of any complaint until next morning.

Upon his cross-examination, he says, he cannot swear positively he handed plaintiff the key on the night of his arrival, but feels confident he gave him the key, as there was no complaint of the want of one until the next night when asked for by Mr. *Soria*.

Mr. Hitchcock testifies that the carpenter of the hotel keeps blank keys on hand, and by examining the locks of the doors, can file the appropriate wards and fix a key in the lock in about ten minutes. From the very frequent occurrence of the carrying away by the guests of the keys, as well as carrying them with them all the time they are not staying at the hotel, instead of depositing them at the office when they leave their rooms, it is therefore necessary for the carpenter to keep these blank keys. That if plaintiff had applied for a key, and there had been none in the office for him, a key would have been fitted in ten minutes, and furnished to him.

Soria testifies that he told the servant, who went down for the liquor, to bring up the key of the room, and that on his return he said a carpenter was then fitting a key for the room. That the waiter afterwards brought up a card from Mr. *Lacosta*, and witness again asked the waiter for a key, who replied that there was none except the pass-key, which would only lock the door from the outside. It appears from the testimony of *Mudge* that no application was made by these two servants for the key. It was certainly an act of negligence to depend upon the servant, instead of going to the office to get the key. If plaintiff had done this, he would not have lost his effects. But it appears from the testimony of *Soria* that he, plaintiff and some other gentlemen, had gone, on the night of the 10th of July from the last train of steam-cars of the

Pontchartrain Railroad to the St. Charles Hotel. They had gone to the lake by the four or five o'clock train of cars, and during their stay there had some champagne. Upon their arrival at the hotel, plaintiff insisted that witness should stay all night with him. Witness wound up plaintiff's watch because he had put him to bed; he was partially asleep and was somewhat under the influence of the liquor he had drank.

Mr. Lewis, a witness of plaintiff, testifies that he was with the party to the lake, and was at plaintiff's room at the hotel on the night of the 10th of July; that plaintiff was affected by the liquor he had drank, and was lying on the bed, but had not been undressed.

It thus appears that plaintiff was not in a condition to protect himself, or exercise the most ordinary diligence. Instead of depending upon himself, and taking proper care of his personal effects, he was obliged to confide in another.

Mr. Soria testified, that he attempted to secure the door in the best way he could, drew his bed cot against the door as he thought, and put a chair there, but in the morning when he woke up, he found that he had not pulled the bed far over enough, and had just left space enough for the door to be opened, and to admit an ordinary sized man without disturbing witness or the bed. It thus appears, that the friend of plaintiff did not manifest sufficient care in seeking to protect him. Witness also states that he laid the watch of plaintiff on the bureau, and that the ring of plaintiff was attached to the watch guard, and also his masonic medal. Upon waking in the morning he saw that the watch, ring, and medal were gone. It was an act of negligence to leave the watch upon the bureau. It would have been more prudent and just as easy to have concealed it under the mattress or in some part of the room. We are of opinion that if plaintiff had been sober he might either have procured a key, or have so concealed his effects that they would not have been lost. His state of intoxication raises a presumption of the omission of that care which he was bound to bestow for his own protection. If he had not been under the effect of liquor he might have been awakened by the noise of the robber entering the room.

His condition may have induced some one to attempt the robbery. Under all the circumstances of the case, we think plaintiff ought not to recover.

It is therefore ordered, adjudged and decreed, that the judgment of the District Court be avoided and reversed; and that there be judgment in favor of defendants against the claim of plaintiff and that plaintiff pay the costs of both courts.

LEGAL MISCELLANY.

THE JUDGES AND THE NEW PUBLIC BUILDINGS.

[The following letter from Judges SHARSWOOD and HARE, of the District Court of Philadelphia, addressed to Gov. PACKER, fully explains the grounds of their objections to the assumption of the duties of Commissioners for the erection of new public buildings, under the act of the last legislature.]

Philadelphia, May 26, 1860.

To his Excellency WM. F. PACKER:

SIR: We have carefully considered the provisions of the act of Assembly entitled "An act providing for the erection of public buildings in the city of Philadelphia," approved April 2, 1860. It constitutes the Judges of the Court of Common Pleas, the Judges of the District Court, the Mayor, and the President of each branch of the City Councils, Commissioners to procure the erection of suitable buildings for the accommodation of the courts and public officers. It requires the Commissioners to decide whether the buildings shall be erected on Independence Square or Penn Square, to adopt a plan, to prepare a contract, to advertise for proposals to build according to such contract, to award the contract at their discretion, to any person or persons, to determine the amount and kind of security to be given by the contractors, and to approve of the sufficiency thereof, to superintend and direct the erection of the buildings, and the fitting them up for the reception of the courts and public officers.

It is clear that the duties thus imposed upon the Commissioners,